

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL STEPHEN KELLER,

Plaintiff,

v.

SCOTT DEGOUGH, et al.,

Defendants.

Case No. 1:21-cv-01707-JLT-EPG (PC)

ORDER RE: PLAINTIFF'S OPPOSITION
TO DEFENDANTS' MOTION TO
CHANGE TIME TO FILE RESPONSE TO
COMPLAINT

(ECF Nos. 28, 29, & 33)

Paul Keller ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On April 14, 2022, Defendants filed a motion for an extension of time to file their responsive pleading. (ECF No. 28). On April 15, 2022, the Court granted Defendants' motion. (ECF No. 29). On May 11, 2022, Plaintiff filed an opposition to Defendants' motion. (ECF No. 33).

The Court has reviewed Plaintiff's opposition, and it does not change the result. Plaintiff argues that defense counsel already had ample time to conduct an investigation because the action was filed on December 1, 2021, thus giving Defendants and defense counsel over four months to investigate and prepare a responsive pleading. Plaintiff also argues that, pursuant to the Court's E-Service order, Defendants were already given sixty days to file their responsive pleading. Accordingly, Plaintiff argues that Defendants and defense counsel already had ample time to prepare their responsive pleading. Plaintiff also argues that defense counsel did not submit

1 evidence that he has been diligent in preparing a responsive pleading. Finally, Plaintiff argues
2 that Defendants should have filed their motion for an extension of time earlier.

3 To begin, Plaintiff's arguments regarding how much time Defendants already had to
4 prepare a responsive pleading are incorrect. While Plaintiff's case was filed on December 1,
5 2021, the Court did not authorize service on Defendants until January 28, 2022. (ECF No. 16).
6 Moreover, in authorizing service, the Court sent the service documents to the California
7 Department of Corrections and Rehabilitation ("CDCR"), so that CDCR could determine whether
8 Defendants would be waiving service of process. (ECF No. 16, p. 2). The documents were not
9 sent to Defendants or defense counsel. (*Id.*). It appears that the Office of the Attorney General
10 was first noticed of the case on February 15, 2022, which is when the CDCR filed its notice of
11 intent to waive service. (*Id.*; ECF No. 21). Thus, Plaintiff is incorrect regarding how much time
12 Defendants and defense counsel already had to prepare the responsive pleading.

13 Plaintiff is also incorrect that defense counsel did not submit evidence that he has been
14 diligent in preparing the responsive pleading. Defense counsel submitted a declaration, signed
15 under penalty of perjury, that explains that defense counsel has been working on this case but
16 needs additional time to prepare the responsive pleading. (ECF No. 28-2, p. 2).

17 Finally, even if Defendants should have filed their motion for an extension of time earlier,
18 their motion was filed several days before their deadline to file a responsive pleading, and the
19 Court will not deny the motion solely on this basis.

20 Accordingly, even considering Plaintiff's opposition, Defendants' motion for an extension
21 of time should be granted. Defendants have until June 17, 2022, to file their responsive pleading.
22 IT IS SO ORDERED.

23 Dated: May 12, 2022

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE
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